

PT 98-93

Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

DON MOYER BOYS AND GIRLS CLUB)	Docket #	95-10-101
Applicant)		
)	Parcel Index #	46-21-07-308-003
v.)		
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Roger E. Haughey, Thomas, Mamer, & Haughey, for Don Moyer Boys and Girls Club.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Springfield, Illinois, on April 20, 1998, to determine whether or not Champaign County Parcel Index No. 46-21-07-308-003 qualified for exemption during the 1995 assessment year.

Elisabeth Barnett, Executive Director of the Don Moyer Boys and Girls Club, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the parcel was used by the applicant for charitable purposes or was leased during the 1995 assessment year. Following the submission of all the evidence and a review of

the record, it is determined that the applicant owned the parcel during a portion of the 1995 year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the parcel in question was leased to a school district in conjunction with applicant's lease of its club building during the portion of the assessment year that the applicant owned the subject property. Therefore, it is recommended that the subject parcel not be exempt from 1995 real estate taxes.

Findings of Fact:

1. The jurisdiction and position of the Department that Champaign County Parcel Index No. 46-21-07-308-000 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 12)

2. On January 22, 1996, the Department received a property tax exemption application from the Champaign County Board of Review for Permanent Parcel Index No. 46-21-07-308-003. The applicant had submitted the request, and the board recommended granting a partial year exemption from March 31, 1995, through December 31, 1995. The Department assigned Docket No. 95-10-101 to the application. (Dept. Grp. Ex. No. 2)

3. On May 30, 1996, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices at 101 W. Jefferson, Springfield, Illinois, on April 20, 1998, was pursuant to that request. (Dept. Ex. No. 5)

6. The Boys' Club of Champaign-Urbana was incorporated under the General Not for Profit Corporation Act on November 17, 1967, for the following purposes:

to provide behavior guidance and to promote the health, social, educational, vocational and character development of boys; to receive, invest and disburse funds, and to hold property for the purposes of the corporation. . . . (Dept. Ex. No. 2 pp. 17-20)

7. On March 1, 1990, the Boy's Club of Champaign-Urbana filed an amendment to their articles of incorporation changing the name of the organization to the applicant. (Dept. Ex. No. 2 pp. 21-22)

8. The by laws of the club require that the membership section of the Boys Club of America Constitution takes precedence in defining the regulations regarding such matters. (Dept. Ex. No. 2 p. 12)

9. The Congressional Charter and Constitution of the Boys and Girls Clubs of America contains a provision that "[M]embership dues and fees shall be within the means of its members and shall not be so large as to exclude needy individuals from membership and participation." (Applicant's Ex. No. 2)

10. The applicant is exempt from payment of federal income taxes pursuant to a 501(c)(3) designation granted by the Internal Revenue Service. (Dept. Ex. No. 2 pp. 53-54)

11. The applicant is exempt from payment of Retailers' Occupation Tax and related taxes pursuant to an exemption granted by the Department on April 21, 1995. (Dept. Ex. No. 2 p. 55)

12. The applicant acquired the subject parcel on March 31, 1995. Located on the property is a parking lot. The property is located at 201 E. Park Street, Champaign, Illinois. (Dept. Ex. No. 2 pp. 1, 4-5)

13. The subject property is adjacent, to the west, to Parcel Index Nos. 46-21-07-308-001 and 46-21-07-308-002. The applicant asserts that both Parcel Index Nos. are owned by the applicant and were granted property tax exemptions by the Department; however, the Docket Nos. and dates of the applications are unknown. (Dept. Ex. No. 2 pp. 3, 16; Tr. p. 21)

14. On the adjacent properties is located applicant's club. The building is used for

afternoon and evening programs with boys and girls, including reading programs, computer instruction, assistance with school work, career guidance, arts and crafts, drug avoidance, athletics, and other related activities. The building is open for applicant's programs Monday through Friday from 3:00 p.m. to 9:00 p.m. Applicant has six core program areas including education, health and physical education, cultural enrichment, social recreation, outdoor environmental, and citizenship and leadership. The learning center in the building is open from 3:00 p.m. to 7:00 p.m. Monday through Friday. The applicant operates physical education programs from 3:00 p.m. through 8:30 p.m. Monday through Thursday and 4:00 p.m. through 8:30 p.m. on Friday. (Dept. Ex. No. 2 pp. 16, 70-75; Tr. pp. 15, 22-26)

15. In the months of June through August, applicant operates a summer program in the building adjacent to the subject property. The program includes such activities as aquatics, arts and crafts, computer education, family nutrition, reading, physical education, and math. The club hours are Monday through Friday, 9:00 a.m. to 5:00 p.m. Fees are charged for aquatics, out of town field trips, and late pick-up of the children. The general membership fee is \$3.00 per year for boys and girls ages 7-18. The applicant has approximately 1400 members in a given year. (Dept. Ex. No. 2 pp. 56-59; Tr. p. 17)

16. In January 1995, the applicant entered into a three and one-half year lease with Champaign County Community School District #4 (hereinafter referred to as "District #4"). The lease commenced on January 10, 1995, and expired on June 30, 1998. (Dept. Ex. No. 2 pp. 24-31)

17. The lease obligates district #4 to pay \$45,000.00 per year as rent for the use of the building located at 201 East Park and parking. The rent is payable in equal monthly installments of \$3,750.00. The rent increases annually in accordance with increases in the cost of living. (Dept. Ex. No. 2 pp. 24-31)

18. District #4 rents the property for an alternative education program. The lease

allows 75 students to attend school in the building. Additional students cost district #4 \$600.00 per student per year. The maximum amount of students on the property shall not exceed 125. District #4 represented that there would be a ten-to-one student-to-teacher ratio on the premises. (Dept. Ex. No. 2 pp. 24-31)

19. According to the lease, district #4 has the right to use a portion (not identified) of the parking area on an exclusive basis from 12 midnight until 3:00 p.m. on days when school is in session. (Dept. Ex. No. 2 p. 28)

20. The lease entitles district #4 year-round access to the fitness center. There are certain areas of the building that district #4 does not have access to and other areas that they do not have the right to access during weekends, holidays, vacations, and other days that the students are not attending school. (Dept. Ex. No. 2 pp. 24-31)

21. The terms of the lease acknowledge that district #4 will be sharing the premises with the applicant on a non-exclusive basis. The parties acknowledge that the applicant's staff arrives on the subject property at approximately 1:00 p.m. The club opens to members at 3:00 p.m. each and every school day. (Dept. Ex. No. 2 pp. 26, 30)

22. The lease also obligates district #4 to pay all assessments, taxes, and fees imposed due to the leasing, possession, or use of the property, (Dept. Ex. No. 2 p. 26)

23. The students that attend school in the building have special needs that require more individualized attention than is available in district #4's other classrooms. The students take courses for which they receive credit hours that will lead toward receiving a high school diploma. (Applicant's Ex. No. 3, Tr. pp. 18-20)

24. The applicant permanently uses four spaces of the parking lot, the subject property of this application, to accommodate its four vans. During school hours, about one-half of the parking spaces are used by the applicant and one-half by district #4 personnel. After 3:00 p.m. all the parking spaces are used by the applicant. During the summer and holidays, all the

spaces are used by the applicant. (Dept, Ex. No. 2 p. 76)

25. I take administrative notice of the fact that the Department granted a property tax exemption to the applicant for 77% of the 1997 assessment year for Parcel Index No. 15-13-15-180-001 pursuant to Docket No. 97-10-157. The exemption deals with another piece of property owned by the applicant in Mahomet, Illinois. The activities that are carried out in the Mahomet branch of the applicant are programs that fit into the applicant's six core program areas and are similar to applicant's programs carried out at the club building adjacent to the parking area. (Applicant's Ex. No.1; Tr. p. 14-17)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. The property that is the subject of this recommendation is used as a parking lot. The statutory provision that offers an exemption for parking areas is found at 35 **ILCS** 200/15-125 and states:

Parking areas, not leased or used for a profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

The exemption for parking lots does not allow a parking lot that is leased to qualify for an

exemption. The statute also requires that related property must qualify for an exemption for the parking lot to be exempt. Therefore, the statutory provision found at 35 **ILCS** 200/15-65 which exempts property used for charitable purposes is also at issue. The provision states in part:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;. . .

It is also necessary to refer to the exemption for school districts, found at 35 **ILCS** 200/15-135 and states:

All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.

The property at issue is a parking lot. Pursuant to the statutory provision above, parking lots that are leased do not qualify for exemption. In this case, the affiliated property at issue is leased by the applicant to a school district. The exemption for school districts requires that the district own the property in order to qualify for an exemption. The exemption for charitable organizations requires that they own the property and use it for charitable or beneficent purposes and not lease it. The facts before me do not meet the above criteria.

I find that the applicant is a charitable organization, pursuant to the determination of the Department in Docket No. 97-10-157. I also find that the applicant leased the property at issue as part of a lease to a school district for \$45,000.00 in 1995.

The applicant argues that Children's Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972) is the controlling case. Applicant's attorney correctly asserts in his brief that Children's Development Center, Inc. v. Olson states:

A religious group (herein called "Sisters") owned a property, which was granted an exemption. Sisters leased part of its real estate to Children's Development Center, Inc. Center met all of the qualifications for a charitable (emphasis and word added) exemption and carried on activities which

qualified for an exemption. The court held that this lease did not cause Sisters to lose its exemption. The court disposed of the issue of an accounting test for profit saying at page 390 [sic] (336) “It is unnecessary through accounting procedures to ascertain whether Sisters actually made a profit from the leasing. This is not the test.” (Applicant’s brief pp. 4-5)

I find that the applicant’s reliance on Children’s Development Center, Inc. is misplaced. The situation in this case is not a charitable organization leasing property to or from another charitable or religious organization but rather a charitable organization leasing property to a school district. The exemption provisions that deal with exemptions to charitable and religious organizations have the word use in the exemption language. See 35 ILCS 200/15-40 and 35 ILCS 200/15-65. The school district statutory provision does not contain that word, nor does the enabling provision in the Constitution. The brief of the applicant is replete with the word use, but the word use does not appear in the school district exemption. I find that the lack of the word use is critical to the determination of the matter before me.

Rather than relying on Children’s Development Center, Inc. v. Olson, I find that the facts in this matter are very similar to those at issue in Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (5th Dist. 1983) leave to appeal denied. In Village of Oak Park, the village, a municipality, leased a parking lot from a church, a religious organization. The Appellate Court noted the differences in the facts from Children’s Developmental Center, Inc. by stating:

However, we believe that this case is distinguishable. In *Childrens Development Center*, the lessee came within section 19.7 of the Revenue Act of 1939 (Ill. Rev. Stat. 1981, ch. 120, para. 500.7)¹ which exempts from taxation all property “actually and exclusively used for *** charitable or beneficent purposes, and not leased or otherwise used with a view to profit.” The section 19.7 exemption, like that in section 19.2² for religious institutions, turns on the primary use of the property. Unlike those provisions, the exemption provided for municipalities turns solely on ownership of the property. Section 19.6³ of the Revenue Act of 1939

¹ Currently found at 35 ILCS 200/15-65.

² Currently found at 35 ILCS 200/15-40.

³ Currently found at 35 ILCS 200/15-60.

provides in relevant part for exemption of “all property owned by any city or village located within the incorporated limits thereof, except such as heretofore has been leased or may hereafter be leased by such city or village to lessees who are bound under the terms of the lease to pay the taxes on such property.” (Ill. Rev. Stat. 1981, ch. 120, para. 500.6) That use of leased land for municipal purposes does not provide an exemption is evident from *People ex rel. Carr v. City of Chicago* (1926), 323 Ill. 68, 153 N.E. 725. There, the city leased land that was used for public playgrounds, police department buildings, a fire station, and a hospital. Although all of the land served municipal purposes, the supreme court held that it was ownership, not use, which determined exemption. *Id.* at 501

As additional support for the denial of the exemption at issue is an opinion of the Attorney General, dated November 18, 1971 (No. S-366). In the opinion, the attorney general addresses the question of whether property owned by a church that had been previously used by the church as a school and gymnasium and was leased to the public school district qualified for an exemption. The income from the leasing was to be used solely for church purposes. The attorney general found that the lease arrangement would remove the tax exemption from the school property of the church.

I find that the lease arrangement between the applicant and the school district includes the parking lot at issue. Although the applicant is apparently the only user of the parking lot during the months of June through August, district #4 has the use of the parking lot from midnight until 3:00 p.m. on days that school is in session. Apparently, they also have the use of the parking lot any time that they access the fitness center. I find that use is more than incidental. The courts in Illinois have held that when a parcel of property is as a whole or in unidentifiable portions is used for both exempt and nonexempt purposes, the property will be granted an exemption only if the exempt use is primary and the nonexempt use is incidental. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill.App.3d 225 (2nd Dist. 1991); Oak Park Club v. Lindheimer, 369 Ill. 462 (1938)

It is therefore recommended that Champaign County Parcel Index No 46-21-07-308-003 remain on the tax rolls for the 1995 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
December 9, 1998